

# Caleb Stegall, J.D.

*Lawrence, Kansas*

## EDUCATION

**J.D., The University of Kansas School of Law, December 1999.** Mr. Stegall graduated with a 3.95/4.00 GPA and a class rank of 3/187. He was elected a member of the Order of the Coif; served as a member of the *Kansas Law Review*; and received the William L. Burdick Prize given annually to the top law student in his or her class.

**B.A., Geneva College, Research Honors, 1993.**

## LEGAL EXPERIENCE

**State of Kansas, Chief Counsel to Governor Sam Brownback, January 2011-Present.** As Chief Counsel, Mr. Stegall advises and represents the Governor and the Governor's Office in all legal matters. Mr. Stegall oversees the work of over one hundred executive branch attorneys in the legal departments of thirteen different cabinet agencies. In addition, Mr. Stegall serves as a senior policy and political advisor to the Governor.

**Jefferson County, Elected Jefferson County Attorney, January 2009-January 2011.** As the lead prosecutor and chief law enforcement official of Jefferson County, Mr. Stegall oversaw a full-time staff that actively managed a yearly caseload of hundreds of felonies and misdemeanors and thousands of traffic offenses. Mr. Stegall personally handled the most serious felony cases from the initial reports, investigation, and charging through jury trial and verdict. Such cases included murder, rape, sexual crimes against children, drug manufacture and distribution, and white collar financial crimes. Mr. Stegall resigned his office in January 2011 to accept an appointment as Chief Counsel to the Governor.

**Stegall & Associates, P.A., Founder and Owner, May 2005-January 2011.** Stegall & Associates (formerly The Stegall Law Firm) was a four attorney firm specializing in constitutional and commercial litigation. Stegall & Associates earned recognition in *U.S. News & World Reports'* listing of Best Law Firms in Kansas. Mr. Stegall left the firm in January 2011 to accept an appointment as Chief Counsel to the Governor.

**Foulston Siefkin LLP, Associate, February 2000-August 2000; August 2001-April 2005.** At the largest law firm in Kansas, Mr. Stegall practiced in the areas of appellate litigation, commercial litigation, regulatory and administrative law, and insurance defense. Mr. Stegall left Foulston Siefkin in May 2005 to found Stegall & Associates, P.A.

**Honorable Judge Deanell R. Tacha, Chief Judge of the United States Court of Appeals for the 10<sup>th</sup> Circuit, Law Clerk, August 2000-August 2001.** Mr. Stegall served in the traditional role of Federal Appellate Court Clerk, providing background research and briefing for the Appellate Judge prior to oral arguments and participating in early drafting of legal opinions.

## **AWARDS & RECOGNITIONS**

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**Selected for inclusion in *The Best Lawyers in America* (18<sup>th</sup> Edition, 2012).** Selection to *Best Lawyers* is based on a rigorous peer review process. *Best Lawyers* has been described by *The American Lawyer* as “the most respected referral list of attorneys in practice.”

**Recipient of the 2010 Kansas Pro Bono Certificate.** This award is given annually by the Kansas Bar Association to recognize outstanding pro bono commitment to ensuring equal access to justice. Mr. Stegall received the award for his work successfully defending and securing the release of four American missionaries wrongfully charged with child trafficking by Haitian authorities in the immediate aftermath of the devastating Haiti earthquake in January 2010.

## **APPOINTMENTS & ASSOCIATIONS**

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**Admitted to practice in all courts of Kansas and in the United States Court of Appeals for the 10<sup>th</sup> Circuit, 2000-Present.**

**Appointed by Governor Brownback to serve as a member of the Kansas Council for Interstate Adult Offender Supervision, January 2011-Present.** The KCIAOS is responsible for administering Kansas’ participation in the Interstate Compact for Adult Offender Supervision which governs the movement across state lines of all adults under correctional supervision.

**Appointed by Governor Brownback to serve as a member of the Kansas Criminal Justice Coordinating Council, January 2011-Present.** The KCJCC is responsible to study and make recommendations to improve the criminal justice system in Kansas; establish and manage a criminal justice database; award and oversee all criminal justice grants to state and local law enforcement agencies; and establish other necessary advisory boards to assist the Council concerning issues and policies within the Kansas criminal justice system.

**Member of the Board of Elders of Grace Evangelical Presbyterian Church, Lawrence, Kansas, February 2004-Present.**

## Appellate Court Applicant Questionnaire

Return to:

Kim Borchers, Director of Appointments  
Office of Sam Brownback, Governor  
Statehouse, Ste. 259-S  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66612

Applicant Caleb Stegall  
Position Sought Kansas Court of Appeals  
Date June 18, 2013

- 1. List each college and law school you attended, degrees and dates earned, scholastic honors, and major academic activities. Please also state your class ranking and grade point average on graduation from law school.**

**The University of Kansas School of Law.** I earned my Juris Doctor in December of 1999 from the University of Kansas School of Law. I graduated with a 3.95/4.00 GPA and a class rank of 3/187. I was elected a member of the Order of the Coif; served as a member of the *Kansas Law Review*; and received the William L. Burdick Prize given annually to the top law student in his or her class.

**Geneva College.** I earned my Bachelor of Arts with research honors from Geneva College in May of 1993.

- 2. List all state bars, courts, and administrative bodies having special admission requirements to which you are presently admitted to practice, specifying the dates of admission, whether you are currently a member in good standing, and whether there have ever been any restrictions on your practice.**

I was admitted to practice in all Kansas state courts by the Kansas Supreme Court on April 28, 2000.

I was admitted to practice in the United States District Court for the District of Kansas on April 28, 2000.

I was admitted to practice in the Tenth Circuit U.S. Court of Appeals on September 26, 2000.

I am a member in good standing of all courts listed above and there have never been any restrictions on my practice.

3. (a) List chronologically your employment since becoming a member of any state bar. As to legal employment, include names and addresses of all law offices, firms, companies, or government agencies with which you have ever practiced, the nature of your affiliation with each, the general nature of your practice, and any other relevant particulars. Also, please provide the name, current address, and telephone number of a person, preferably your supervisor, who can verify your employment for each position listed. See K.S.A. 20-105 and 20-3002, which require a potential nominee to have been engaged in the “active and continuous practice of law” for at least ten years prior to the date of appointment. Include in your list the months and years of legal employment to verify that you meet this statutory requirement.

**State of Kansas, Chief Counsel to Governor Sam Brownback**  
**January 2011-Present**  
**Contact: Governor Sam Brownback**  
**Kansas Statehouse, 300 SW 10<sup>th</sup> Street, Topeka, Kansas 66612**  
**(785) 368-6423**

As Chief Counsel to the Governor, I advise and represent the Governor and the Governor’s Office in all legal matters. I oversee the work of approximately one hundred and thirty executive branch attorneys in the legal departments of thirteen different cabinet agencies. In addition, I serve as a senior policy and political advisor to the Governor.

**Jefferson County, Elected Jefferson County Attorney**  
**January 2009-January 2011**  
**Contact: Jefferson County Clerk Linda Buttron**  
**Jefferson County Courthouse, 300 Jefferson Street, Oskaloosa, Kansas 66066**  
**(785) 863-2272**

As the lead prosecutor and chief law enforcement official of Jefferson County, I oversaw a full-time staff that actively managed a yearly caseload of hundreds of felonies and misdemeanors and thousands of traffic offenses. I personally handled the most serious felony cases from the initial reports, investigation, and charging through jury trial and verdict. Such cases included murder, rape, sexual crimes against children, drug manufacture and distribution, and white collar financial crimes. I resigned my office in January 2011 to accept an appointment as Chief Counsel to the Governor.

**Stegall & Associates, P.A., Founder and Owner**  
**May 2005-January 2011**  
**Contact: Self-Employed**  
**504 Plaza Drive**  
**Perry, Kansas 66073**

I founded Stegall & Associates (formerly The Stegall Law Firm) as a solo practitioner in 2005 in order to pursue a general “country” law practice. Located as a main street storefront in my hometown of Perry, population 1,000, Stegall & Associates grew to a four attorney firm serving the general legal needs of rural Jefferson County. At the same time, our expertise was actively sought out by clients with a need for specialized representation in complex constitutional and commercial litigation. As a result, less than five years after its founding, Stegall & Associates earned recognition in *U.S. News & World Reports’* listing of Best Law Firms in Kansas. I left the firm in January 2011 to accept an appointment as Chief Counsel to the Governor.

**Foulston Siefkin LLP, Associate**  
**February 2000-August 2000; August 2001-April 2005**  
**Contact: James Rankin**  
**534 South Kansas Ave.**  
**Topeka, Kansas 66603**  
**(785) 233-3600**

At the largest law firm in Kansas, I practiced in the areas of appellate litigation, commercial litigation, regulatory and administrative law, and insurance defense. I left Foulston Siefkin in May 2005 to found Stegall & Associates, P.A.

**Honorable Judge Deanell R. Tacha, Chief Judge of the United States Court of Appeals for the 10<sup>th</sup> Circuit, Law Clerk**  
**August 2000-August 2001**  
**Contact: Hon. Deanell Tacha (currently Dean of the Pepperdine University School of Law, 24255 Pacific Coast Highway, Malibu, California 90263, (310) 506-4621)**  
**Chambers of Judge Deanell R. Tacha**  
**Lawrence, Kansas 66044**  
**(No current street address or phone number)**

I served in the traditional role of Federal Appellate Court Clerk, providing background research and briefing for the Appellate Judge prior to oral arguments and participating in early drafting of legal opinions.

**(b) List published articles on legal subjects as well as continuing legal education courses which you have presented during the past five years.**

None

**(c) Attach a writing sample which reflects your own work product, preferably containing legal analysis and citation to authority.**

Brief of *Amicus Curiae* Samuel D. Brownback, *Essex v. Kobach*, Case No. 12 CV 04046 (United States District Court for the District of Kansas sitting as a three judge panel pursuant to 28 U.S.C. § 2284), decision reported at --- F.Supp.2d ---, 2012 WL 2126876 (D. Kan. June 7, 2012) (Attached).

**4. If in private legal practice, describe your typical client(s). If not in private legal practice, describe your employer or work arrangement, your position within the structure (are you supervised, how is work assigned, who receives your work product), and other information you feel would assist the Governor and the Senate in understanding the nature of your current professional responsibilities.**

As Chief Counsel to the Governor, my professional responsibilities vary widely and encompass three broad areas: (1) traditional legal advice and representation; (2) policy development and implementation; and (3) management and administrative responsibilities. I report to the Governor and I oversee the work of approximately one hundred and thirty executive branch attorneys in thirteen cabinet agencies.

In the first category, my responsibilities include providing direct legal representation to the Governor and the Governor's Office; managing and overseeing all legal matters involving the cabinet agencies of the state; and consulting with the Kansas Attorney General and the Attorney General's Office on any legal matter having a significant public policy impact on the state.

In the second category, my responsibilities involve participating in the policy making process from early formation through full implementation, whether that takes the form of direct executive action or the form of a legislative agenda resulting in newly made law. I participate at the level of a senior advisor and am responsible, in particular, to manage, guide, and provide counsel regarding the specific legal implications and ramifications of any policy initiative.

Finally, my responsibilities include a significant role in the overall management and administration of the large executive bureaucracy of the state.

**5. What percentage of your court appearances in the last five years was in:**

2 % Federal district court  
- % Federal appellate court  
85 % State general jurisdiction court  
10 % State appellate court  
- % State limited/special court (Specify the court.)  
3 % Administrative bodies

**6. (a) If your practice includes litigation, list and describe the five most significant cases which you personally litigated, giving case caption, number, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried, and the names of other attorneys involved.**

I selected the five cases described in detail below because: (1) they demonstrate the wide variety of matters I have handled; (2) each presented unique legal challenges; (3) in each instance the outcome had a major public policy or community impact; and (4) all five of these cases attracted significant public interest and opinion.

**1. *Essex v. Kobach*, Case No. 12 CV 04046, United States District Court for the District of Kansas sitting as a three judge panel pursuant to 28 U.S.C. § 2284 (decision reported at --- F.Supp.2d ---, 2012 WL 2126876 (D. Kan. June 7, 2012)).**

Case Description – Including brief factual summary and the involved parties, judges, and attorneys:

*Essex* was the Kansas reapportionment case decided by a three judge panel of the United States District Court for the District of Kansas after the Kansas Legislature was unable to fulfill its constitutional role, following the 2010 census, to adopt new apportionment maps for the Kansas Congressional Districts, the Kansas Senate, the Kansas House of Representatives, and the Kansas Board of Education. The three judges on the panel were Judge Kathryn Vratil, Judge Mary Beck Briscoe, and Judge John Lungstrum. The case attracted numerous intervening parties and multiple attorneys. The complete list is included in the certificate of service attached to the brief I filed in the case which is also attached as my writing sample.

Case Significance – Including the nature of my participation in the case:

*Essex* set the direction of the Kansas Legislature for the next decade by drawing entirely new apportionment maps for all 125 house districts and all 40 senate districts. As such, it was the most politically significant litigation in Kansas in many years, and likely will remain so for many years to come. Prior to *Essex*, Governor Brownback had regularly taken the position that the reapportionment of these political boundaries should hew as closely as possible to the constitutional principle of “one person, one vote” by creating districts with as nearly identical populations as possible.

In *Essex*, the multiple politically interested parties argued for a wide variety of proposed maps, depending on their political leanings, all of which contained high population deviations. On behalf of my client, Governor Brownback, I authored an *amicus* brief that clearly outlined the court’s constitutional obligation to draw

reapportionment maps that contained at most a *de minimus* population deviation of plus or minus one percent. In a case with over twenty parties and hundreds if not thousands of pages of legal argument filed with the court, Governor Brownback's *Amicus* Brief was the only filing to present this legal argument to the court. In its ruling, the court adopted, with only slight variation, the argument made by the *Amicus* Brief and rejected every other reapportionment proposal advocated by the parties. The brief is attached as my writing sample.

**2. *Haiti v. Thompson, Thompson, Culberth, & McMullin*, District Court of Port-Au-Prince, Haiti (dismissal filed February 17, 2010).**

Case Description – Including brief factual summary and the involved parties, judges, and attorneys:

This case, widely known as the case of American Missionaries in Haiti, involved ten American missionaries who had travelled on a humanitarian mission to the nation of Haiti in the immediate aftermath of the devastating 2010 Haitian earthquake. One of the missionaries was Drew Culberth, a firefighter and youth pastor from Topeka. Also on the trip were Mr. Culberth's brother-in-law and nephew, Paul and Silas Thompson, along with their family friend Steve McMullin.

In the chaos and instability that existed in Haiti in the days and weeks that followed the earthquake, the missionaries sought to provide safe housing, food, clothing, and other services to Haitian children thought to be orphaned by transporting them to a facility in the Dominican Republic. The missionaries were arrested and charged with kidnapping and child trafficking and held in a Haitian jail in Port-Au-Prince pending trial. Soon after their arrest, I was retained to represent Drew Culberth, Paul Thompson, Silas Thompson, and Steve McMullin. Haitian District Court Judge Bernard Saint-Vil presided over the case. Local counsel on behalf of my clients was obtained from Gary Lissade, a former Attorney General of Haiti.

Case Significance – Including the nature of my participation in the case:

This case was quite significant on a number of different levels. I had the unique opportunity to lead a defense effort for four American citizens wrongfully charged with serious crimes in a foreign country during a time of great crisis and uncertainty. Not only were the lives and futures of four Americans and their families at stake, but also implicated were the future diplomatic relations between our country and Haiti as well as the public reputation and standing of our country and our country's missionaries in the international community.

I defended my clients successfully, culminating in the complete dismissal of all charges and the safe evacuation of my clients from a hostile foreign situation. This



required not only traditional legal representation through fact gathering, the presentation of evidence, and making legal arguments to the court, but also required: (1) a sophisticated media strategy to cope with the overwhelming international media interest in the case; (2) the coordination of actions between and among numerous parties and government agencies including the State Department and the Department of Defense; (3) the planning and execution of a safe extraction of my clients by a private security firm from a Haitian jail to a military transport following the dismissal of charges and release of my clients; and (4) the planning and execution of a post-release strategy that would enable my clients to reintegrate into their lives with their public reputations and personal privacy intact.

This matter entailed numerous dramatic turns and occurred in a context beset with difficulties, primary of which was the almost complete destruction of the Haitian infrastructure and near total breakdown in its systems and procedures of governance due to the cataclysmic earthquake that country experienced. Through the extraordinary efforts of many people both in Haiti and across the United States, I was able to lead the defense of my clients through these difficulties to a successful conclusion. One indirect result in which I take particular satisfaction is that, in part through our efforts, a man named Jorge Puello who was at-large in Haiti and the Dominican Republic was apprehended and arrested on an Interpol warrant on charges of leading a sex trafficking ring out of El Salvador.

My firm donated all of its time on this matter and for my work I was recognized by the Kansas Bar Association as a recipient of the 2010 Pro Bono Certificate.

**3. *State v. Hooper*, Case No. 09 CR 136, Jefferson County District Court (jury verdict delivered on April 26, 2010); *affirmed by State v. Hooper*, 2012 WL 1237892 (Kan. App., March 30, 2012).**

Case Description – Including brief factual summary and the involved parties, judges, and attorneys:

*Hooper* was a homicide prosecution that I took to jury trial, obtaining a guilty verdict against the defendant for second degree murder. The defendant, Adam Hooper, had been an itinerant farm hand providing manual labor on the farm of Gene Kingsbury in Jefferson County, Kansas. During an argument, Mr. Hooper beat Mr. Kingsbury repeatedly with a 2x4 plank and deposited his unconscious body into a water cistern, covering him with garbage and plant material, where Mr. Kingsbury drowned. Mr. Hooper was represented by Mike Hayes and Judge Gary Nafziger presided over the trial.

Case Significance – Including the nature of my participation in the case:

*Hooper* was significant due to the severity of the crime and due to the fact that this was the first homicide prosecution in Jefferson County in nearly a decade. As the chief law enforcement official of Jefferson County, I handled this case in its entirety from observing the police work at the murder scene through trial, verdict, and sentencing. *Hooper* involved complex legal and factual issues relating to D.N.A. evidence, the defendant's mental state and competency issues, and constitutional questions relating to police confessions. The conviction was upheld on appeal by the Kansas Court of Appeals in an unpublished decision on March 30, 2012.

**4. *Van Meteren v. The Kansas Governmental Ethics Commission*, Case No. 09 C 432, Shawnee County District Court (settled May 13, 2009).**

Case Description – Including brief factual summary and the involved parties, judges, and attorneys:

My client, Kris Van Meteren, a former executive director of the Kansas Republican Party, had previously filed an ethics complaint against Senator Dwayne Umbarger alleging misappropriation of campaign funds. At the time, the Kansas Governmental Ethics Commission had confidentiality rules in place that prohibited any person making a complaint from publicly discussing the complaint. Senator Umbarger reimbursed his campaign the questioned amounts and the Ethics Commission dismissed the complaint. However, because Mr. Van Meteren had discussed the complaint with the *Topeka Capital Journal*, the Commission opened a case against Mr. Van Meteren and fined him \$7,500.

Mr. Van Meteren then retained me to represent him in a challenge to the Ethics Commission's action. I filed the above referenced action in Kansas District Court alleging that the Ethics Commission's action had impermissibly abridged the First Amendment rights of my client to free speech. The case was dismissed prior to any court involvement after the Kansas Attorney General and the Ethics Commission conceded that their actions and regulations were, in fact, unconstitutional, and the fine was reversed. Deputy Attorney General Michael Leitch represented the Ethics Commission.

Case Significance – Including the nature of my participation in the case:

*Van Meteren* is an important case because it resulted in the elimination of an unconstitutional gag rule from Kansas government. This significant change in the law was only achieved through the risk taken by my client and through the legal work I performed on the case. After being retained by Mr. Van Meteren, I performed exhaustive legal research on the Ethics Commission's unconstitutional gag rule, devised the litigation strategy, and conducted extensive legal discussions and negotiations with the Kansas Attorney General's Office. When the Kansas Attorney General's Office became convinced that the state could not prevail and that in fact the gag rule was

unconstitutional, they advised the Commission, and the Commission agreed, to both rescind the fine against my client and to abolish the unconstitutional restrictions on the free speech rights of Kansas citizens. I take satisfaction in this matter as it provided a real strengthening and broadening of the free speech rights of all Kansans.

**5. *Comprehensive Health of Planned Parenthood of Kansas v. Kline*, 287 Kan. 372 (2008).**

Case Description – Including brief factual summary and the involved parties, judges, and attorneys:

This case was a mandamus proceeding filed pursuant to the original jurisdiction of the Kansas Supreme Court. It was filed by Planned Parenthood against my client, former Attorney General and then Johnson County District Attorney Phil Kline, seeking the disgorgement of certain documents obtained during the course of an ongoing criminal investigation begun during Mr. Kline's tenure as Kansas Attorney General and continued during Mr. Kline's tenure as Johnson County District Attorney. Planned Parenthood advanced a number of legal theories to compel the document disgorgement, all of them arguing at root that the documents had been obtained by Mr. Kline outside the exercise of his legitimate authority as either Kansas Attorney General or Johnson County District Attorney.

Planned Parenthood was represented by Pedro Irigonegaray and Bob Eye. The Office of the Attorney General was represented by Attorney General Stephen Six and Deputy Attorney General Michael Leitch. My co-counsel were Todd Graves and Edward Greim. The case was tried to appointed Special Master David King. The case was briefed and argued to, and decided by, the Kansas Supreme Court.

Case Significance – Including the nature of my participation in the case:

The Kline mandamus action was perhaps the most widely observed and commented upon, and certainly one of the most unique, actions occurring before the Kansas Supreme Court in recent history. I acted as lead counsel to the defendant and handled the entire matter from pre-trial discovery and motions practice through trial before the Special Master and concluding with briefing and arguments before the Supreme Court.

The significant aspects of this case to me, both at the time of the representation and in retrospect, are not the aspects that generated such partisan and political heat, but rather were the legal arguments being advanced which would set precedent in all future criminal investigations and which, if adopted by the court, would hamstring law enforcement officials and would have dramatically restricted many of law enforcement's traditional methods of gathering and using evidence. My advocacy was successful in

protecting these traditional law enforcement prerogatives for future prosecutors and investigators when the Supreme Court ruled in the defendant's favor on the substantive arguments advanced by Planned Parenthood.

In addition to the result obtained, I take great satisfaction in the fact that though this matter—its politics and its litigants—was one of the most overtly and extremely partisan fights ever to occur in the Kansas Supreme Court, I was able, along with opposing counsel, to bring the high degree of professionalism and political disinterest to the case that must be the mark of our profession at its best. As a result, the attorneys and judges involved were able to present evidence, arguments, and authorities to the court in such a way that the vitally important constitutional authority of the Attorney General and other law enforcement officers and officials was protected while at the same time the rights of the other parties were preserved in the underlying cases.

My opposing counsel, then Attorney General Stephen Six, has endorsed my nomination to the Kansas Court of Appeals.

**(b) If your practice does not include litigation, describe the five most significant legal matters in which you were involved. Describe the nature of your participation in the matter and the reason you believe these experiences are relevant for consideration by the Governor and the Senate. Provide the name of the client and the names of other attorneys involved.**

N/A

**7. Describe any additional arbitration, mediation, or other alternative dispute resolution experience that you would like to bring to the attention of the Governor and the Senate.**

I have participated in numerous successful mediations on behalf of clients in complex civil matters.

**8. Have you ever held judicial office? If so, provide copies or give citations to significant opinions.**

No

**9. (a) State your approximate individual net worth and the nature of your substantial financial interests.**

My net worth, shared with my wife Ann, is approximately \$250,000. Our substantial financial interests consist of our home and our personal property.

**(b) Are you a director or officer of any business or corporation? Do you hold an ownership interest of more than \$5,000 in value (stock, partnership or proprietorship equity, or otherwise) in any business or corporation?**

No

**(c) Are you a member of any partnership or joint venture?**

No

**(d) If appointed, would you be willing to resign or divest yourself of any business interests, offices, or positions you now hold, if required by the Canons of Judicial Conduct?**

Yes

**10. Have you ever been charged or convicted of a violation of any law except traffic offenses? [DUI violations and reckless driving offenses should be included.] If you answer “yes” to this question, please supply the information requested in the Endnote.**

No.

**11. (a) Have you, within the last ten years, failed to file any applicable local, state, or federal income tax return, schedule, or report required by law? If “yes,” provide the name and address of the taxing authority, the tax year(s) for which you failed to file the return, schedule, or report, and the date you finally filed the return, schedule, or report.**

No.

**(b) Have you, within the last ten years, failed to pay any taxes owed pursuant to state or federal law? If “yes,” provide the name and address of the taxing authority, the tax year(s) for which you failed to pay, and the date you finally paid the taxes. If you continue to owe past due taxes, list the current balance of the taxes by tax year and by taxing authority.**

No.

**(c) Has a tax lien or other collection procedure ever been instituted against you by local, state, or federal authorities? If “yes,” supply the information requested in the Endnote.**

No.

**12. Have you ever sued or been sued by a client. If “yes,” supply the information requested in the Endnote.**

I have never sued or been sued by a client.

**13. Have you ever been disciplined or cited for a breach of ethics or professional conduct by any professional disciplinary body? If you are a judge, have formal proceedings ever been instituted against you by the Commission on Judicial Qualifications? If “yes,” provide the information requested in the Endnote.**

No

**14. List all bar associations, professional associations, or professional societies of which you are or have been a member. Give the titles and dates of any offices which you have held and committees on which you served.**

American Bar Association

Kansas Bar Association

Topeka Bar Association

Jefferson County Bar Association

Kansas County and District Attorneys Association

**15. For the last ten years, list all civic, service, charitable, or other community organizations of which you have been a member, including the titles and dates of any offices which you have held and the activities in which you have been or are engaged in each such organization.**

Grace Evangelical Presbyterian Church, Member since 1995 & Member of the Board of Elders from 2004 to the present. As a parishioner, I am engaged in the ordinary weekly activities of a large church. As a member of the Board of Elders since 2004, I have been actively engaged in the management and oversight of the church.

Audubon of Kansas, Member, Director, & Member of the Executive Committee from 2007 to 2010. As a member of the Board of Directors chosen to sit on the Executive Committee, I acted in the traditional management and decision making capacity for our state’s largest conservation organization.

Oskaloosa Rotary Club, Member from 2009 to 2010. I participated in the ordinary functions of a Rotary Club member including weekly lunches and charity and community events.

Family Promise. Family Promise is charitable organization operating in Lawrence, Kansas that provides transitional housing, job training, and other social services to homeless families in the Douglas County area. I have acted as pro bono legal counsel to Family Promise.

Fields of Promise. Fields of Promise is a charitable organization headquartered in Lawrence, Kansas that partners with other non-profit organizations to provide food, housing, medical care, and education to orphaned children in Ethiopia. I have acted as pro bono legal counsel to Fields of Promise.

**16. If you have been in the military service, state the length of service, the branch and dates you served, your rank on discharge, and the type of discharge.**

N/A

**17. List the names, addresses, and telephone numbers of five persons who are well acquainted with your legal ability. In addition, if you are a practicing attorney, list the names, addresses, and telephone numbers of three judges before whom you have made an appearance in the last five years and three lawyers who have been adverse to you in litigation or negotiations within the last five years.**

**Five persons well acquainted with my legal ability:**

Hon. Deanell R. Tacha (letter of endorsement is attached)  
24255 Pacific Coast Highway  
Malibu, California 90263  
(310) 506-4621

Hon. Eric F. Melgren  
United States District Court  
401 North Market, Suite 423  
Wichita, Kansas 67202  
(316) 315-4320

Derek Schmidt (letter of endorsement is attached)  
Memorial Hall

120 SW 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
(785) 296-2215

James D. Oliver (letter of endorsement is attached)  
Foulston Siefkin LLP  
32 Corporate Woods, Suite 600  
9225 Indian Creek Parkway  
Overland Park, Kansas 66210  
(913) 498-2100

Alan E. Streit (letter of endorsement is attached)  
Larson & Blumreich, Chartered  
5601 SW Barrington Court South  
Topeka, Kansas 66604  
(785) 273-7722

**Three judges before whom I have made an appearance in the last five years:**

Hon. Gary L. Nafziger  
Jefferson County Courthouse  
300 Jefferson Street  
Oskaloosa, Kansas 66066  
(785) 863-2461

Hon. Dennis L. Reiling  
Jefferson County Courthouse  
300 Jefferson Street  
Oskaloosa, Kansas 66066  
(785) 863-2461

Hon. Peggy Kittel  
Douglas County Courthouse  
111 E. 11<sup>th</sup> Street  
Lawrence, Kansas 66044  
(785) 832-5144

**Three lawyers who have been adverse to me in litigation or negotiations  
within the last five years:**

Stephen N. Six (letter of endorsement is attached)  
Stueve Siegel Hanson LLP  
460 Nichols Road, Suite 200



Kansas City, Missouri 64112  
(816) 714-7190

Terrence J. Campbell (letter of endorsement is attached)  
Barber Emerson, L.C.  
1211 Massachusetts Street  
Lawrence, Kansas 66044  
(785) 843-6600

Daniel L. Watkins (letter of endorsement is attached)  
The Law Offices of Daniel L. Watkins  
901 New Hampshire Street, Suite 200  
Lawrence, Kansas 66044  
(785) 843-0181

**18. If you are a judge, list the names, addresses, and telephone numbers of at least five lawyers who have appeared before you within the last five years. Include relevant case names and numbers.**

N/A

**19. State any other information which you believe should be disclosed in connection with the Governor's and the Senate's consideration of your potential nomination to one of the Kansas Appellate Courts.**

**a. Qualifications**

The Preamble to the Kansas Code of Judicial Conduct states: "An independent, fair and impartial judiciary is indispensable to our system of justice. Our legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society." In my view, every applicant to this position must be weighed according to this high standard.

My application demonstrates that I possess the necessary competence, skill, experience, and temperament to be a Judge of the Court of Appeals. It further demonstrates fidelity to the character traits of independence, political disinterest, integrity, and service which are equally necessary.

I have excelled academically; have successful experience in a wide variety of legal settings and in a wide array of substantive legal areas; have practiced in the state's largest law firm; have begun and managed a thriving small rural general practice; have been an elected prosecutor; and have served as a high level state official.

Finally, I have always been dedicated to the idea of the profession of law as a service. One of the proudest moments of my career was being recognized by the Bar Association in 2010 with the Kansas Pro Bono Certificate. I have striven to imbue my entire professional life with the idea of service—to others in need, to justice, to protecting the equal rights of all citizens, to fairness, and to our great state and nation.

**b. Awards & Recognitions**

Selected for inclusion in *The Best Lawyers in America* (18<sup>th</sup> Edition, 2012). Selection to *Best Lawyers* is based on a rigorous peer review process. *Best Lawyers* has been described by *The American Lawyer* as “the most respected referral list of attorneys in practice.”

Recipient of the 2010 Kansas Pro Bono Certificate. Awarded by the Kansas Bar Association, the award is given to recognize outstanding pro bono commitment to ensuring equal access to justice. I received the award for my work successfully defending and securing the release of four American missionaries wrongfully charged with child trafficking by Haitian authorities in the immediate aftermath of the devastating Haiti earthquake in 2010.

**c. Other Gubernatorial Appointments**

Appointed by Governor Brownback to serve as a member of the Kansas Council for Interstate Adult Offender Supervision. The KCIAOS is responsible for administering Kansas’ participation in the Interstate Compact for Adult Offender Supervision which governs the movement across state lines of all adults under correctional supervision.

Appointed by Governor Brownback to serve as a member of the Kansas Criminal Justice Coordinating Council. The KCJCC is responsible to study and make recommendations to improve the criminal justice system in Kansas; establish and manage a criminal justice database; award and oversee all criminal justice grants to state and local law enforcement agencies; and establish other necessary advisory boards to assist the Council concerning issues and policies within the Kansas criminal justice system.

**d. Peer Recommendations**

I have the respect and support of my peers in the profession as demonstrated by the attached letters of endorsement. I have been endorsed by a former chief judge of the Tenth Circuit Court of Appeals; the current Dean of Pepperdine University Law School; two Attorneys General, one Democrat and one Republican; a former Dean of the University of Kansas School of Law; the President of the Kansas Bar Association; the Chairman of the Kansas Bar Association’s Bench-Bar Committee; an attorney member of the Supreme Court Nominating Commission; a lay member of the Supreme Court Nominating Commission; a former official from the administration of former Governor

Kathleen Sebelius; and many other pillars of the Kansas legal community. The endorsements cross the political spectrum and they testify to the fact that in my practice I have always striven to the highest levels of skill, competence, professionalism, ethics, justice, and political disinterest.

**e. Personal**

I am a life-long Kansan. My family has lived in Kansas for generations. I have been married to my wife Ann for 19 years and we have 5 sons. We live on a small acreage in south-east Jefferson County.

**Endnote**

- The title of the proceedings.
- If formal proceedings have been filed, the caption of the case and the court or tribunal in which the case was filed and the location of same.
- The date of the alleged violation or incident giving rise to the charge.
- A statement of the relevant facts.
- The identity of the principal parties involved.
- The outcome of the proceedings, specifying any sentence, decision, and/or judgment entered.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ROBYN RENEE ESSEX, et. al.,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	
vs.	)	Case No. 12-CV-04046-KHV-DJW
	)	
KRIS W. KOBACH,	)	
Kansas Secretary of State,	)	
	)	
Defendant.	)	
_____	)	

Brief of *Amicus Curiae* Samuel D. Brownback  
in his Official Capacity as Governor of the State of Kansas

COMES NOW Samuel D. Brownback, as *amicus curiae* in his official capacity as the Governor of the State of Kansas, by and through counsel pursuant to this court's Minute Order of May 25, 2012 (Document No. 152) and to D. Kan. Rule 7.6, and submits his *Amicus* Brief as follows.

I. NATURE OF THE CASE

This is a case brought pursuant to 28 U.S.C. § 2284 seeking a court ordered reapportionment plan for the Kansas Congressional Districts, the Kansas Senate, the Kansas House of Representatives, and the Kansas Board of Education. The Kansas Legislature has failed to adopt any reapportionment plan. As such, this court must order such reapportionment plans in order to preserve the constitutional rights of Kansas citizens.

II. STATEMENT OF INTEREST OF *AMICUS* GOVERNOR BROWNBACK

*Amicus* Governor Brownback has a substantial interest in the reapportionment plans adopted by this court for the state of Kansas. In particular, *Amicus* Governor Brownback has a special interest as he is the state officer who would have been required to either approve or veto

any reapportionment plan that successfully passed both the Kansas Senate and the Kansas House of Representatives. *Amicus* Governor Brownback's specific interest concerns the state reapportionment plans for the Kansas Senate and for the Kansas House of Representatives. *Amicus* Governor Brownback has made public statements to the Kansas Legislature indicating that for a politically passed reapportionment plan to obtain his support, it must contain districts with low deviations from the ideal population.

While *Amicus* Governor Brownback does not advocate in favor of any particular reapportionment plan in this brief, he does have a substantial interest in protecting the equality of every Kansas citizen's vote. As such, *Amicus* Governor Brownback has an interest in ensuring that any court ordered reapportionment plan adopted by this court meets the stringent "one person, one vote" rule with a near zero total deviation from ideal.

### III. STATEMENT OF FACT

Currently, based on the State's total adjusted population, the ideal population for each Kansas state senatorial district is 70,986 persons and the ideal population for each Kansas state representative district is 22,716 persons. *See* Stipulation at ¶ 37. Deviation from ideal district size is measured as a percentage of the ideal. "Total deviation" of any particular plan is calculated by adding the largest negative percentage deviation to the largest positive percentage deviation, regardless of mathematical sign. *See Farnum v. Burns*, 561 F.Supp. 83, fn. 5 (D. Rhode Island 1983) ("The total deviation of a reapportionment plan is determined by adding the deviation of the district with the largest population to the deviation of the district with the smallest population."). Total deviation is referred to by the Kansas Legislative Research Department as "Relative Overall Range." *See, e.g.,* Buffalo 1, Population Summary at [http://redistricting.ks.gov/\\_Plans/Proposed\\_Plans/m5\\_buffalo1/30-m5\\_buffalo1-popsum.pdf](http://redistricting.ks.gov/_Plans/Proposed_Plans/m5_buffalo1/30-m5_buffalo1-popsum.pdf). This brief will refer to any particular plan's Relative Overall Range as "total deviation."

The total deviation of each of the Kansas Senate reapportionment plans considered by the Legislature are as follows:

Ad Astra .....	9.94%
For the People V6 Amendment .....	9.74%
Ad Astra Revised .....	9.94%
For the People 12 Amendment .....	5.22%
Wheat State Amendment .....	9.95%
For the People 13b .....	7.41%
Buffalo 30 Revised .....	6.14%
Buffalo 20 .....	9.93%
Buffalo 30 .....	6.12%
Buffalo 40 Revised .....	9.8%
Buffalo 1 .....	9.96%
Ad Astra Revised JoCo Amendment .....	9.94%
Ad Astra Revised Wichita 3 Amendment .....	9.94%
Ad Astra Revised JoCo Wichita 3 .....	9.94%
Colonel Henry Leavenworth 2 Amendment .....	8.51%
Wheat State 5 Amendment .....	7.41%
Alf Landon 1 Amendment .....	8.23%

See Stipulation at ¶ 91; Population Summaries at [http://redistricting.ks.gov/\\_Plans/plans\\_proposed\\_3.html](http://redistricting.ks.gov/_Plans/plans_proposed_3.html).

The total deviation of each of the Kansas House of Representatives reapportionment plans considered by the Legislature are as follows:

Cottonwood 1 .....	9.86%
LeDoux Amendment .....	9.86%
Cottonwood 1 Knox B Amendment .....	9.86%
Cottonwood II .....	9.86%

See Stipulation at ¶ 91; Population Summaries at [http://redistricting.ks.gov/\\_Plans/plans\\_proposed\\_2.html](http://redistricting.ks.gov/_Plans/plans_proposed_2.html).

#### IV. STATEMENT OF THE QUESTION PRESENTED

1. Should this court follow the weight of federal court precedent and adopt reapportionment plans that fall within the zero to two percent total deviation safe harbor when there are no significant and articulable non-political state policies that could not otherwise be vindicated by such a near zero deviation plan?

## V. ARGUMENTS AND AUTHORITIES

1. *Court ordered plans of reapportionment for state legislatures are held to a significantly more stringent constitutional standard for equal population than are plans approved through the political process.*

The Constitutional principle of “one person, one vote” was derived from the Equal Protection Clause and has been the guiding principle of political apportionment ever since. Population equality is the “overriding objective” of any court taking up a reapportionment case. *See Reynolds v. Sims*, 377 U.S. 533, 579 (1964). In *Reynolds*, the Court “established that both houses of a state legislature must be apportioned so that districts are as nearly of equal population as is practicable. While mathematical exactness or precision is not required, there must be substantial compliance with the goal of population equality.” *Chapman v. Meier*, 420 U.S. 1, 22 (1975) (citing *Reynolds*, 377 U.S. at 577) (internal quotations and citations omitted).

When reapportionment plans are approved through the political process, the Constitution permits wider latitude to deviate from the ideal population for the districts in question. As a general rule, the Court has stated that any plan adopted by the political branches will be presumed to comply with “one person, one vote” if its total deviation is 10% or less. *See Voinovich v. Quilter*, 507 U.S. 146, 161 (1993). However, when the state has failed to adopt a reapportionment plan through the political process, as in the instant case, the Supreme Court has dictated a far more stringent standard of equal representation.

In *Chapman*, the Supreme Court established the rule to apply in circumstances like the one before this court. “A court-ordered plan, however, must be held to higher standards than a State’s own plan. With a court plan, *any deviation from approximate population equality* must be supported by enunciation of historically significant state policy or unique features.” 420 U.S. at 26 (emphasis added). Thus, *Chapman* held that “unless there are persuasive justifications, a

court-ordered reapportionment plan of a state legislature must ... achieve the goal of population equality with little more than *de minimis* variation.” *Id.* at 26-27.

In subsequent decisions, the Court has clearly elucidated the rationale for the *Chapman* rule. The “high standards” of this rule reflects

the unusual position of federal courts as draftsmen of reapportionment plans. We have repeatedly emphasized that legislative reapportionment is primarily a matter for legislative consideration and determination, for a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality. The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people’s name. In the wake of a legislature’s failure constitutionally to reconcile these conflicting state and federal goals, however, a federal court is left with the unwelcome obligation of performing in the legislature’s stead, while lacking the political authoritativeness that the legislature can bring to the task. In such circumstances, the court’s task is inevitably an exposed and sensitive one that must be accomplished circumspectly, and in a manner free from any taint of arbitrariness or discrimination.

*Connor v. Finch*, 431 U.S. 407, 414-415 (1977) (internal quotations and citations omitted).

2. *This court should adopt a de minimis standard of zero to two percent total deviation for its court ordered plan of reapportionment for the Kansas Senate and the Kansas House of Representatives.*

The question of what, precisely, is a *de minimis* total deviation per the *Chapman* rule is a question federal courts have struggled to answer. It is clear that there is no bright line rule or mathematically precise standard. Rather, the “question is one of degree.” *Connor*, 431 U.S. at 419. Courts have regularly cited *Chapman* for the proposition that the Supreme Court has declined to accept a 5.95% total deviation as *de minimis*. *See, e.g., Connor*, 431 U.S. at fn. 17. While one court has held that a total deviation of 4.11% qualifies as “sufficiently *de minimis*,” *Wyche v. Madison Parish Police Jury*, 635 F.2d 1151, 1159 (5<sup>th</sup> Cir. 1981), this decision appears to be an outlier. The bulk of opinions lead to the conclusion that a *de minimis* standard should fall in the range of zero to two percent total deviation.



For example, in *Colleton County Council v. McConnell*, 201 F.Supp.2d 618 (D. South Carolina 2002), the three judge district court panel rejected plans submitted to the court by the South Carolina House of Representatives and by the Governor with total deviations of 4.86% and 3.13% respectively. The court ruled that both plans “exceed the range of *de minimis* population deviation and, therefore, could not be adopted by this court even if they were to survive the preclearance process under the Voting Rights Act.” *Id.* at 652. The plans were “beyond an acceptable range of deviation for a court-ordered plan.” *Id.* Instead, the court adopted a plan of reapportionment that “achieves the requisite population equality, with a total *de minimis* deviation of plus or minus one percent variation.” *Id.* at 655.

In *Wisconsin State AFL-CIO v. Elections Board*, 543 F.Supp. 630 (E.D. Wisconsin 1982), the three judge district court panel again rejected all plans that had been partially worked by the state legislature, including a relatively low variance plan with a 2.83% total deviation. The court held that “[w]e believe that a constitutionally acceptable plan ... *should, if possible, be kept below 2% [total deviation].*” *Id.* at 634 (emphasis added). While the court considered the various state policies present in the partially worked legislative plans, it “reluctantly concluded that we can, by drawing our own plan, be more faithful to the goals of reapportionment than would be the case if we were to take the easy way out and merely adopt one of the plans submitted to us. For this reason we promulgated the attached plan .... The deviation in our plan is a scant 1.74%.” *Id.* at 637.

A review of other three judge district court panel opinions demonstrates that the consensus of opinion in cases similar to the instant case tends to cohere around a *de minimis* standard of zero to two percent total deviation. See *Baldus v. Members of the Wisconsin Government Accountability Board*, -- F.Supp.2d --, 2012 WL 983685 (E.D. Wisconsin March

22, 2012) (holding that state legislative reapportionment plans with total deviations of 0.76% and 0.62% complied with the requirement of *de minimis* deviation); *Stenger v. Kellett*, -- F.Supp.2d --, 2012 WL 601017 (E.D. Missouri February 23, 2012) (approving a court ordered reapportionment plan stating that “[t]he maximum deviation between the highest population district and the lowest population district is less than one-tenth of one percent, much lower than the difference [of 1.13%] approved by the Court of Appeals in *Fletcher v. Golder*, 959 F.2d 106, 109 (8<sup>th</sup> Cir. 1992).”); *Larios v. Cox*, 314 F.Supp.2d 1357 (N.D. Georgia 2004) (holding that a plus or minus one percent total deviation complied with the *de minimis* standard for court ordered plans while rejecting higher total deviation plans); *Smith v. Cobb County Board of Elections*, 314 F.Supp.2d 1274 (N.D. Georgia 2002) (“Under the Court’s plan, none of the districts deviates from the ideal district size by more than one percentage point. Furthermore, the Court’s plan has an overall deviation of only 1.51%, which is a smaller total deviation than either of the plans proposed by the parties.”); *Farnum v. Burns*, 561 F.Supp. 83 (D. Rhode Island 1983) (holding that a total deviation of 1.58% was *de minimis*).

Recently, some courts have even indicated that the progression towards the zero to two percent total deviation standard has been a justified, and even necessary, result of the advent of powerful computer drafting technology which can satisfy a wide variety of state interests and still maintain near zero deviations. “[I]ndeed, it is an interesting question whether deviations that might have been acceptable in an earlier time ought to be tolerated now that ... it is possible for a computer to draw not one, but an unlimited number of districts with the perfect number of voting inhabitants.” *Baldus, supra* at \*7. “Technology is such today that precise population equality is not only possible but commonplace in state redistricting plans. Thus, the focus has shifted from a question of what can practicably be done to a question of what is desirable within a

redistricting process.” *Burton v. Sheheen*, 793 F.Supp. 1329, 1342 (D. South Carolina 1992), *vacated on other grounds by Statewide Reapportionment Advisory Committee v. Theodore*, 508 U.S. 968 (1993).

In any event, it is clear that a near zero total deviation plan, when ordered by a federal court, is not only possible and desirable, but is constitutionally mandated. This court should adopt as its *de minimis* total deviation standard, in keeping with the weight of prior precedent, a zero to two percent total deviation standard.

3. *None of the state reapportionment plans considered by the Kansas Legislature satisfy the standard for de minimis total deviation required by the Constitution for court ordered plans of reapportionment.*

- a. Reapportionment plans considered by the Kansas Legislature for the Kansas Senate or the Kansas House of Representatives have total deviations ranging from 9.96% to 5.22%.

In light of the weight of precedent set forth above, none of the state reapportionment plans considered by the Kansas Legislature satisfy the constitutional standards for equality that must be present in any court ordered plan. As such, this court must reject them all. Even the lowest deviation plan considered by the Legislature, For the People 12 Amendment, has a deviation of 5.22% which cannot withstand the *Chapman* rule. As demonstrated, courts applying the *Chapman* rule have rejected plans with total deviations of 4.86%, 3.13%, and 2.83% as insufficiently equalized in population. Even utilizing the outlier *Wyche* decision as the extreme of acceptable total deviation at 4.11%, every single plan considered by the Kansas Legislature must fail. On the other hand, federal courts have routinely found a *Chapman* safe harbor in adopting court ordered plans that fall in the zero to two percent total deviation range. This court should do the same and, following the *Wisconsin State AFL-CIO* court, refuse to “take the easy

way out,” instead adopting a reapportionment plan that strictly adheres to the constitutional principle of equally distributed population in order to preserve “one person, one vote” in Kansas.

- b. There exist no substantial and discernible state policies that would justify any departure from the strict standard of equality preserved by adopting a zero to two percent total deviation plan of reapportionment.

If this court determines that there exists any factual rational for population variations higher than zero to two percent total deviation, “it is the reapportioning court’s responsibility to articulate precisely why a plan ... with minimal population variance cannot be adopted.” *Chapman*, 420 U.S. at 27. Moreover, the “burden is on the District Court to elucidate the reasons necessitating any departure from the goal of population equality, and to articulate clearly the relationship between the variance and the state policy furthered.” *Id.* at 24.

Even though this court is permitted within certain narrow parameters to seek to discover through the evidentiary process the various state policies present in Kansas’s reapportionment efforts, this court “is forbidden to do so when the legislative plan would not meet the special standards of population equality ... that are applicable to court-ordered plans.” *Upham v. Seamon*, 456 U.S. 37, 39 (1982). Moreover, of those state policies, this court is further restricted in considering only such policies as are non-political. *See Colleton County Council*, 201 F.Supp.2d at 628 (“[W]e do not possess the latitude afforded a state legislature to advance political agendas.”). Finally, courts have generally recognized that due to the overriding goal of population equalization, the articulation of substantial state policies that could justify higher total deviations is an extremely high burden. One court explained that “[g]iven that compliance with the principles of one man, one vote is the preeminent concern of court-ordered plans, the very real possibility exists that certain state policies will be compromised in a court-ordered plan which could have been better served had judicial intervention not been necessary.” *Burton*, 793

F.Supp. at 1343, *vacated on other grounds by Statewide Reapportionment Advisory Committee v. Theodore*, 508 U.S. 968 (1993).

In the instant case, while certain parties will undoubtedly argue in favor of their preferred state policies inherent in their preferred plans of reapportionment, there are no policies that are non-political and which are sufficiently articulable to override the primacy of a near zero total deviation plan. This court may be required to let any such state policy go less than fulfilled in the face of the constitutional necessity of equalized population. More likely, however, given the powerful computer aided drawing technology available, any such policy can be given equal or nearly equal vindication in a near zero total deviation plan.

Where two plans exist that are comparable in their satisfaction of state policies, this court is obligated to choose the plan with a more equalized population distribution. In fact, by way of example, it is noted that the Essex A plan presented by the Plaintiff in this action has a 1.98% total deviation (within the safe harbor of zero to two percent total deviation). *See* Stipulation at ¶ 91; Essex A, Population Summary at [http://redistricting.ks.gov/\\_Plans/Proposed\\_Plans/M5\\_Eessex%20A/30-m5\\_essex-a-popsum.pdf](http://redistricting.ks.gov/_Plans/Proposed_Plans/M5_Eessex%20A/30-m5_essex-a-popsum.pdf). While maintaining this constitutionally permissible near zero total deviation, Essex A vindicates any cognizable non-political state policy at least as well as the other legislatively proposed plans, all of which have total deviations of 5.22% or higher. Whether this court adopts Essex A or not, its existence demonstrates clearly that there are no significant non-political state reapportionment policies that cannot be adequately addressed by a near zero total deviation plan.

## VI. CONCLUSION

This court should and must adopt a stringent standard for equality of population distribution. The weight of authority allows that for a court ordered plan of reapportionment of

state legislative bodies, there is a safe harbor of constitutionality when the court ordered plan has a zero to two percent total deviation. In the instant case, there are no substantial and articulable non-political state policies that justify any greater deviation. While this court has in front of it many plans considered at some point in the political process by the Kansas Legislature, none of those plans comes close to the stringent standard of equality required by the Constitution for court ordered plans. Therefore, this court must eschew the easy route of simply approving one or the other of these plans. Rather, this court must reject all legislatively proposed plans and adopt a plan that succeeds in meeting the near zero total deviation rule of *Chapman*.

s/ Caleb Stegall

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 31, 2012, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

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s/ Caleb Stegall

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## LETTERS OF ENDORSEMENT

- Hon. Deanell R. Tacha, *Dean of Pepperdine University School of Law; former Chief Judge of the Tenth Circuit U.S. Court of Appeals*
- Derek Schmidt, *Attorney General of the State of Kansas*
- Hon. Stephen N. Six, *Stueve, Siegel, Hanson, L.L.P.; former Attorney General of the State of Kansas; former Kansas State District Court Judge*
- Prof. Stephen R. McAllister, *Professor of Law at the University of Kansas School of Law; former Dean of the University of Kansas School of Law*
- Dennis D. Depew, *Depew Law Firm; President of the Kansas Bar Association*
- Alan E. Streit, *Larson & Blumreich, Chartered; Chair of the Kansas Bar Association Bench-Bar Committee*
- Jay F. Fowler, *Foulston Siefkin, L.L.P.; Elected Member of the Kansas Supreme Court Nominating Commission*
- Felita Kahrs, *Appointed Member of the Kansas Supreme Court Nominating Commission*
- James D. Oliver, *Foulston Siefkin, L.L.P.*
- David L. Corliss, *City Manager of Lawrence, Kansas*
- Daniel L. Watkins, *The Law Offices of Daniel L. Watkins*
- Terrence J. Campbell, *Barber Emerson, L.C.*
- Whitney B. Damron, *Whitney B. Damron, P.A.*
- Stephen L. Martino, *Director of the Maryland Lottery; former appointee in the Administration of Governor Kathleen Sebelius*

# PEPPERDINE UNIVERSITY

## School of Law

OFFICE OF THE DUANE AND KELLY ROBERTS DEAN

June 19, 2012

Governor Sam Brownback  
Senator Jeff King, Chair of the Senate Judiciary Committee  
Kansas Statehouse  
300 SW 10<sup>th</sup> Avenue  
Topeka, Kansas 66612

Re: Caleb Stegall

Dear Governor Brownback:

It is a privilege to recommend Mr. Caleb Stegall for your serious consideration for the Kansas Court of Appeals. In my judgment he would make an excellent appellate judge and would be a distinguished member of that important Court. Mr. Stegall was my law clerk from August 2000-August 2001. He was outstanding in all respects. His remarkable intellectual ability combines with a very fine-tuned sense of the practical effects of the legal issues involved. He analyzes issues with precision and rigor. He was especially adept at writing with clarity and insightful understanding of the issues presented. Caleb Stegall is a very hard worker whose power of intellect and legal facility model the attributes that are so important to all judges.

Perhaps of equal importance with his legal ability is Caleb's character. He holds himself and all those with whom he works to the highest ethical standards and levels of professionalism that characterize the finest public servants. He measures himself and his work by these standards. He listens carefully to all arguments and viewpoints. He takes into account all appropriate perspectives. He is measured and fair in every professional and personal endeavor in which I have observed him. He would bring to the bench that all-important combination of legal excellence and human compassion. You will note that Caleb won the Kansas Bar Association's Pro Bono Certificate for his work securing the release of four American missionaries who were wrongfully charged in Haiti. That work was emblematic of Mr. Stegall's commitment to the rule of law and to protection of the rights of individuals.

Caleb Stegall has had a wide array of experiences in the legal profession in Kansas. He has practiced in a large firm, served as County Attorney, founded his own firm, and been Chief Counsel to the Governor. This broad experience would, no doubt, strengthen his judicial work. I am so pleased that Caleb is interested in this position on the Kansas Court of Appeals. As a Kansan all my life (temporarily on west coast assignment!!), I care deeply about the future of the courts in Kansas. In my view, Caleb Stegall would be a worthy successor to the many fine Kansans who have served on the Kansas Court of Appeals. I hope you will give him serious consideration. Thank you for your service.

Yours Very Truly,

A handwritten signature in cursive script that reads "Deanell Reece Tacha". The signature is written in dark ink and is positioned above the typed name and address.

Deanell Reece Tacha  
Duane & Kelly Roberts Dean  
Pepperdine University School of Law  
310-506-4621



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT  
ATTORNEY GENERAL

June 26, 2013

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

Honorable Sam Brownback  
State Capitol, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

Dear Governor Brownback:

You soon will exercise your new authority to nominate, subject to Senate confirmation, a "14<sup>th</sup> judge" for the Kansas Court of Appeals. I encourage you to nominate your chief counsel, Caleb Stegall.

As attorney general, I have worked closely with Mr. Stegall during his service as your chief counsel. We have developed a strong professional relationship, and I have come to admire Mr. Stegall's keen legal mind and professional approach to the practice of law in the public sector.

Mr. Stegall's professional credentials speak for themselves – a top graduate of our University of Kansas School of Law, clerk for the Honorable Deanell Tacha, practitioner in our state's largest law firm, leader of a small private law firm, your chief counsel, and all the while honored and respected by his peers.

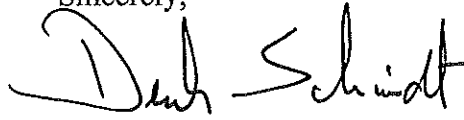
Critically important, however, is Mr. Stegall's experience as a prosecutor for the State of Kansas. During his term as Jefferson County attorney, Mr. Stegall was the leader for criminal justice and public safety in his county. He prosecuted felonies and misdemeanors, worked closely with law enforcement, enforced the law, protected the constitutional liberties of defendants, and defended the rights of victims of crime. In short, Mr. Stegall developed a broad and personal understanding of how the criminal justice system works. As the state's chief law enforcement official, I believe strongly that having Mr. Stegall's prosecution experience added to the Court of Appeals would further strengthen the Court and would benefit the administration of criminal justice in Kansas.

In short, Caleb Stegall is a distinguished and accomplished Kansas lawyer. He brings experience with, and an understanding of, the unique dynamics of public sector law that is rare on the courts. He also brings real-world criminal prosecution experience that would be a great asset to the Court of Appeals.

For these reasons, Mr. Stegall stands out as an exceptional candidate for the Court of Appeals. I recommended him for a previous opening on the Court, and I continue to believe that he should

be selected to serve on the Court. Thank you for your consideration, and it would be my pleasure to provide any further information that may be helpful to you.

Sincerely,

A handwritten signature in black ink, reading "Derek Schmidt". The signature is fluid and cursive, with the first name "Derek" and last name "Schmidt" clearly legible.

Derek Schmidt  
Kansas Attorney General

cc: Honorable Jeff King

# Stueve • Siegel • Hanson

LLP

Stephen N. Six  
six@stuevesiegel.com

Phone: (816) 714-7190  
Fax: (816) 714-7101

460 Nichols Road, Suite 200  
Kansas City, Missouri 64112

June 28 2013

✓ Senator Jeff King  
State Capitol-237 E  
Capitol, 300 S.W. 10<sup>th</sup> Ave.  
Topeka, Kansas 66612

Re: Recommendation of Caleb Stegall to the Kansas Court of Appeals

Dear Senator King:

I am writing at the request of Caleb Stegall who I understand is being considered for a position on the Kansas Court of Appeals. I write to recommend Caleb Stegall for a position on this court. Through my contact and experience with Caleb I believe he has the qualities, intelligence and demeanor to make a fine addition to the court.

I first met Caleb when he was a clerk on the Tenth Circuit Court of Appeals. Even among many smart clerks, Caleb's intelligence stood out. He is a deep thinker, a scholar of the law and someone who cares deeply about the Constitution and our systems of government. During my time in private practice I worked on cases where Caleb was on the other side, often in highly contested and charged litigation. I found Caleb to have a pleasant, even-handed and cooperative approach. In my experience Caleb was always prepared and diligent in his work.

I also worked with Caleb when I was Attorney General. Caleb represented clients in difficult and challenging cases that had the opportunity to draw considerable attention. I found that during this difficult work, Caleb represented his clients well and did so without any unnecessary drama and, despite the challenging issues presented, maintained an even and pleasant approach to solving his clients problems.

I have known Caleb outside of the professional world and believe his demonstrates these same qualities in his personal life. He is highly principled, ethical, and takes great pride in being a lawyer. I believe Caleb has great respect for the Kansas court system and would make a terrific addition to the Kansas Court of Appeals.

Very truly yours,



Steve Six





June 25, 2013

The Honorable Sam Brownback  
Governor of Kansas  
The Honorable Jeff King  
Chair of the Senate Judiciary Committee

**Re: Caleb Stegall for Court of Appeals Judgeship**

Dear Governor Brownback and Senator King:

It is my pleasure to submit a letter of recommendation in support of my former law student, Caleb Stegall, who is currently Chief Counsel to the Governor. I am confident that Caleb possesses the attributes necessary to serve with distinction as a Kansas appellate judge.

My primary experience with Caleb was when he was a law student at the University of Kansas in the late 1990s. As a student, Caleb was exceptional. He was extremely bright, focused, and motivated. He achieved a near perfect GPA in law school, finishing 3<sup>rd</sup> in his class, being elected to Order of the Coif, and serving on the Kansas Law Review. Among other honors, he also won the Burdick Prize which is awarded to the law student with the highest GPA at the end of the first year.

I had Caleb in a couple of my classes, and I recall him as a dedicated and talented student. With Caleb, there was never any question whether he was prepared for class or whether he was engaged during class – he was. In fact, teachers dream of law students who come to class as prepared and engaged as Caleb always was, and teachers dream of students who function at the intellectual level he does. In short, Caleb was an obvious star (though quiet in his demeanor) in the classroom, and I was by no means the only faculty member to hold an extremely high opinion of Caleb.

In my view, a good judge is a lifelong student of the law, necessarily being required to learn new areas of the law as the judge decides cases with widely-ranging subject matters. Further, judges need to have the ability to sort through the chaff and recognize the important kernels—the key issues and arguments—as they decide cases. Caleb as a student exhibited just the kind of focus, judgment, and intellect that, in my opinion, would make him an excellent

judge. He will readily learn new areas of the law as necessary, and he can cut right to the key issues in a case. I think he would be both efficient and effective as a judge.

Furthermore, as Caleb's resume indicates, his various roles since graduation from law school give him an impressive breadth and depth of legal experience. He has practiced civil law at the largest Kansas-based law firm, run his own firm, and even served two years as an elected county attorney. Most recently, he has been heavily involved in state government, serving as counsel to the Governor and a number of state agencies. In that capacity, I have had occasion to work with him on some aspects of the currently pending school finance litigation, and I have found Caleb to be just as sharp as always, able to digest extraordinary amounts of information while zeroing in on the key issues. I also am favorably impressed by the judgment and wisdom he has demonstrated in our dealings in that matter.

In sum, Caleb brings to the table a variety of legal experiences, all of which should enhance his ability to act as a thoughtful and capable judge in a wide range of cases. I am confident that Caleb Stegall is an outstanding candidate for an appellate judgeship, with more than sufficient practical experience to prepare him for that role, and certainly with the intellect and drive to serve the State well.

Sincerely,

A handwritten signature in black ink, reading "Stephen R. McAllister". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Stephen R. McAllister

E.S. & Tom W. Hampton Distinguished  
Professor of Law

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DOUGLAS D. DEPEW  
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TELEPHONE 326-2628  
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June 18, 2013

Governor Sam Brownback  
300 SW 10<sup>th</sup> Ave., Suite 241S  
Topeka, KS 66612-1590

Senator Jeff King  
300 SW 10<sup>th</sup> Ave.  
Topeka, KS 66612

Re: Caleb Stegall

Dear Sam & Jeff:

I am writing in support of Caleb Stegall's interest in the Kansas Court of Appeals vacancy for the new 14<sup>th</sup> position. I have known Caleb for the past 6 years. I first met Caleb as a result of my service on the Kansas Board of Discipline of Attorneys. Caleb represented Eric Rucker in a very high profile attorney discipline case. Subsequent to that case, in my role as an officer of the Kansas Bar Association (KBA), I have had dealings with Caleb over the past several years in his role as Chief Counsel to the Governor on several issues that the KBA has a great interest in. I believe that my experience with him and my knowledge of his background has given me insight on what sort of Court of Appeals Judge he would make.

In the Rucker case, Caleb zealously represented his client, but at the same time was able to keep the political aspects of the case out of the case. Caleb focused on getting to the truth of the facts in the case regardless of what the political fallout would be. Caleb used his intellect and legal skills to cut to the chase in the matter in a way that helped streamline the process and achieve multiple goals. Those goals were representing his client as well as getting to the truth as to what happened that led to case being filed. In the end, Caleb achieved an excellent result for his client and helped shed light on the facts in the case. Those facts and the result in the Rucker case were later supported and confirmed by another disciplinary hearing panel in the Phill Kline case. Regardless of his personal political views, Caleb was able to work towards getting the truth to come out and ensure that a just result was reached. To me, that is a hallmark of what a good appellate judge should do, focusing on the matter at hand, ensuring a just result, and keeping the rule of law paramount over the politics of the matter before him.

In my dealings with Caleb in his current position, my experience has been that Caleb is willing to listen and consider all information and viewpoints that are presented. On at least one issue, I feel that Caleb was able to see that there was

Governor Brownback and Senator King  
Re: Caleb Stegall  
6/18/2013

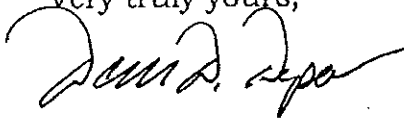
merit in reaching a reasonable compromise that was in the best interest of the state. Unfortunately, that compromise was unable to be approved by others involved in the process, but the fact remains that Caleb was once again able to operate above the politics of the situation and focus on what was best for the citizens of Kansas.

Caleb's rural County Attorney Kansas practice would be a huge plus for him on the Court. Roughly 70% of the case load before that court is in criminal cases. Caleb's prosecutorial duties involved him in numerous criminal cases and that experience will be valuable as an appellate judge. In addition, much of what being an appellate judge is about includes interpretation of the law filtered through one's own background and perspective. Caleb will offer a perspective that other judges from more urban areas may not have considered. Although Caleb has a Lawrence mailing address, he lives in a rural area in Jefferson County. He is and has been a "country lawyer" and his practice for a number of years was in a rural area. With the growing trend (subject to one recent exception) of the Kansas Appellate Court members to be from urban areas on either the I-70 or I-35 corridors, having our next Court of Appeals Judge who lives in and had a substantial practice in a rural area would be a big plus to those of us who also hail from rural areas.

Finally, the position of appellate judge requires intelligence and writing abilities. Caleb was one of the top students in his law school class and has demonstrated his writing skills from the Kansas Law Review and his clerkship with Judge Tacha through his practice since that time.

In conclusion, I unreservedly support Caleb Stegall's consideration by you as the 14th Kansas Court of Appeals Judge. As you both know, I have had an interest in such a position myself. However, I have told Caleb that if he was interested I would support his pursuit of such a position and not personally apply. If Caleb was not interested, I would apply myself. That is the best testament I can offer to the fact that I feel Caleb would be an outstanding addition to the Court of Appeals. If you have any questions I will be more than happy to answer them.

Very truly yours,



Dennis D. Depew  
[dennis@depewlaw.biz](mailto:dennis@depewlaw.biz)  
DDD/s

# LARSON & BLUMREICH, CHARTERED

WILLIAM A. LARSON  
CRAIG C. BLUMREICH  
MATTHEW S. CROWLEY  
JOEL W. RIGGS  
ALAN E. STREIT

(FORMERLY GEHRT & ROBERTS, CHARTERED)

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ROBERT L. ROBERTS  
1933 - 2004

FLOYD E. GEHRT  
Retired

ID # 48-0992424

June 18, 2013

Governor Sam Brownback  
Office of the Governor  
Kansas State Capitol  
300 Southwest 10<sup>th</sup> Avenue, Suite 241-S  
Topeka, Kansas 66612-1590

Senator Jeff King  
Chair of the Senate Judiciary Committee  
Kansas State Capitol  
300 Southwest 10<sup>th</sup> Avenue, Suite 341-E  
Topeka, Kansas 66612-1590

Re: Mr. Caleb Stegall

Dear Governor Brownback and Senator King:

It is my distinct pleasure and honor to offer my enthusiastic, unqualified support of Mr. Caleb Stegall as a candidate to serve on the Kansas Court of Appeals.

Before discussing Mr. Stegall's qualifications, I want to share the perspective from which I have come to know and appreciate Mr. Stegall. I attended law school with Mr. Stegall at the University of Kansas and graduated in May of 2000. I am currently an AV rated lawyer in private practice, serve as the Chair of the Kansas Bar Association's Bench-Bar Committee and am currently Municipal Court Judge for the towns of Rossville and Willard, Kansas. Throughout my practice, I have tried dozens of jury trials and argued several cases in front of both the Kansas Court of Appeals and the Kansas Supreme Court. This experience has allowed me to not only get to know Mr. Stegall, but to see how he compares to his peers.

## LARSON & BLUMREICH, CHARTERED

Governor Sam Brownback  
Senator Jeff King  
June 18, 2013  
Page 2

Although I consider Mr. Stegall a friend, I write this letter from the perspective of a legal colleague who has the firmly held belief and opinion that Mr. Stegall is one of the most brilliant legal minds in Kansas. In my law practice and as chair of the KBA Bench-Bar Committee, I am in frequent communication with the leaders of the Kansas bar, including Judges of all levels throughout the State of Kansas. This experience has provided me the perspective to recognize that Mr. Stegall possesses the intellect, character, and judgment not found in many other lawyers in our profession.

My initial opinion of Mr. Stegall was formed fairly early as a classmate of his in law school. While studying alongside Mr. Stegall, it was obvious that he had the capacity to analyze complex legal issues at an extremely high level and with an ease not shared by my other classmates. As an example, I have the distinct recollection of Mr. Stegall having spirited, high-level debates with our Constitutional law professor during class.

Since law school, I have been involved in civil litigation with Mr. Stegall while he was in private practice. I have also had opportunities to meet with Mr. Stegall concerning personal and family matters. He has always shown a consistent dedication to personal integrity, demonstrated uncanny wisdom, and exercised the utmost judgment and discretion. As a result, I have personally witnessed and appreciated Mr. Stegall's professionalism and integrity in the representation of his clients as well as his value system with respect to his personal and family life.

As Chair of the KBA Bench-Bar Committee, I believe that Mr. Stegall is the ideal candidate to fill the role as Judge of the Kansas Court of Appeals. The Governor would serve the citizens of the State of Kansas and the members of the Kansas bar well in appointing Mr. Stegall as Judge of the Kansas Court of Appeals. Likewise, members of the Kansas Senate would serve their constituents well in providing their consent to this appointment. I know of no individual who is more qualified or individually suited to fill this role.

If there is any additional information I can provide that would assist your office in this evaluation, please let me know.

Thank you.

Respectfully Yours,

LARSON & BLUMREICH, CHARTERED

A handwritten signature in black ink, appearing to read "AES", with a long horizontal line extending to the left.

Alan E. Streit  
[alan@lbc-law.com](mailto:alan@lbc-law.com)

AES:bk

# FOULSTON SIEFKIN LLP

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913 498 2100  
Fax 913 498 2101

MEMBER  
OF THE KANSAS  
BAR ASSOCIATION  
OF INDEPENDENT LAWYERS

July 1, 2013

Governor Sam Brownback  
State Capitol  
300 S.W. 10<sup>th</sup> Avenue, Suite 241S  
Topeka, KS 66612-1590

Re: Nomination of Caleb Stegall

Dear Governor Brownback:

I am writing this letter to support the nomination of Caleb Stegall for the open position on the Kansas Court of Appeals. You certainly have knowledge of Caleb's professionalism, diligence and intellect, but I want to reaffirm those attributes from my position as a lawyer in private practice.

Caleb has a breadth of experience that makes him uniquely suited to the demands of a judge on our Court of Appeals. I first got to know him when he joined our firm after clerking for Judge Tacha on the Tenth Circuit. During his tenure with our firm, Caleb's keen intellect and passion for the law was clear to us all. His smile, his sincerity and his good humor made him a friend to all in the firm and are characteristics that have continued to serve him well in the profession.

After leaving our firm, Caleb continued in private practice and government service. He has served as a County Attorney, which is important practical experience for the Court of Appeals job given the significant criminal case load of that court, and, of course, has served you as your Chief Counsel. Caleb's experience will serve him well in a judicial role.

I also think it appropriate to comment on my interaction with Caleb in his role as your Chief Counsel. In addressing complex legal problems I have found Caleb to be a person who listens, considers, and problem-solves in cases that can be controversial and perhaps intractable. It is the hallmark of a good lawyer who can approach those situations with dignity and a respect for the other side's position while advocating on behalf of his client. While lawyers can and will disagree on the merits of matters in controversy, you should know Caleb has earned the respect and good will of the lawyers involved.

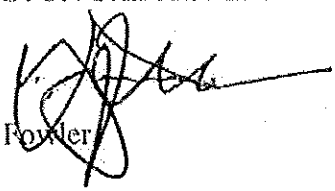
I have also served on the Kansas Supreme Court Nominating Commission and have had the privilege of visiting with Caleb about the role of a judge, his preparations for that role and the importance of the judiciary in the rule of law. I can tell you that Caleb is a very impressive candidate. I remember his discussion of the "art of judging" in response to questions posed by

Governor Sam Brownback  
July 1, 2013  
Page 2

the Nominating Commission and it is clear that he has necessary foundation, insight and respect for the judicial process that will make him a good judge.

Sincerely,

FOULSTON SIEFKIN LLP

  
Jay F. Fowler

JFF/lc

cc: Senator Jeff King



July 8, 2013

The Honorable Sam Brownback  
Governor, State of Kansas  
Office of the Governor  
Capitol, 300 SW 10<sup>th</sup> Ave  
Topeka, KS 66612

**Re: Caleb Stegall**

Dear Governor Brownback:

It is my honor and pleasure to recommend Caleb Stegall as the next Judge for the newest vacancy on the Kansas Court of Appeals.

As a member of the Supreme Court Nominating Commission, I carefully reviewed Caleb's application; along with more than 20 other candidates who submitted applications last fall for the two open seats to the Kansas Court of Appeals. Based upon the selection criteria given to me as a Commission member, which included the essential qualifications and traits to look for in a top candidate, I found that Caleb's outstanding academic background, his excellent writing ability, and the experience he brings to this position, exceeded and in some cases far surpassed the other applicants.

Prior to the interview, I called and had the privilege to speak with nearly all of Caleb's references which included judges and lawyers – both liberals and conservatives. Over and over again I heard the same sentiments: "Caleb is very bright and intelligent," "Caleb is an excellent writer," "Caleb has a very perceptive legal mind," "Caleb is reasonable and fair even in opposition," "Caleb works well under pressure," and one of my favorites "Caleb has the highest level of integrity of anyone I know." The final question I asked each reference was for them to rate Caleb's abilities as a potential judge on a scale of 1 (being unacceptable) to 7 (being outstanding.) Without exception, every reference gave Caleb the highest rating of a 7. It goes without saying that I was very impressed with both Caleb's references and application materials.

Because the Supreme Court Nominating Commission was impressed with Caleb's credentials, he and a few other candidates were asked to appear before the Commission a second time. During both interviews, I witnessed many of the attributes to which his references referred. Caleb was professional and confident and answered each question thoughtfully and graciously. It is my opinion that Caleb was one of the top candidates that appeared before the Commission but due to politics, his name was not submitted.

I wholeheartedly recommend Caleb Stegall without reservation to serve as Judge of the Kansas Court of Appeals. I believe his legal knowledge, analytical skills, temperament, and experience make him an excellent choice.

Very truly yours,

A handwritten signature in black ink, appearing to read "Felita Kahrs", with a long horizontal flourish extending to the right.

Felita Kahrs  
Supreme Court Nominating Commission Member

Enclosure

cc: Senator Jeff King, Chair of the Senate Judiciary Committee

# FOULSTON SIEFKIN LLP

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June 24, 2013

Hon. Sam Brownback  
Governor of Kansas  
State Capitol  
300 SW 10th Ave., Ste. 212S  
Topeka, KS 66612-1590

Hon. Jeff King  
Senator, 15<sup>th</sup> District  
Capitol-237 E  
Topeka, KS 66612

Re: Nomination of Caleb Stegall as Judge of the Kansas Court of Appeals

Dear Senator King:

It is my privilege to recommend Caleb Stegall for appointment as a judge of the Kansas Court of Appeals.

I have known Caleb for more than a dozen years and worked with him on many matters when he was with our firm. I valued his work so much that I continued to seek his assistance and associate him as co-counsel after he started his own firm. We worked together on several appeals and district court cases. Based on this experience, I am a firm believer in his capabilities to be a great appellate judge.

Caleb's writing is clear and logical. He knows how to state and explain the facts of a case so that they may be properly understood, without embellishment, omission, or mistake. He focuses on what is material and relevant and notices things I might not have picked up on. In my experience, it is a critical skill for a judge to pay careful attention to facts and state them so that the decision made on the law logically follows and makes precedent that can properly be applied to similar facts in the future without confusion.

Caleb is a serious legal scholar. His understanding of law is deep and wide. He is experienced in multiple areas of law, including defense work, plaintiffs' work, criminal prosecution, environmental law, constitutional law, business law, administrative law, and

June 24, 2013

Page 2

appellate law. I never hesitated to ask him questions on any subject. Even as a new associate, he was mature, responsible, and trustworthy with all kinds of legal matters. His accomplishments in his career have borne out his potential. He is a full-fledged peer of any lawyer practicing in our state today. He has worked hard and achieved much while keeping his priorities in the right perspective.

I am pleased that Caleb is willing to serve as an appellate judge, as he is well suited for that position by temperament and judgment, as well as his intellectual capabilities, education, and experience. Caleb is very much an "ordinary Joe" without pretentiousness or vanity. He treats people from all walks of life exactly the same. He is considerate and compassionate, while being objective and logical. He is brilliant and has common sense. He will work well with other judges on the court.

Caleb's experience as a federal court of appeals law clerk will allow him to come to the court with significant judicial training and readiness. He will know and apply the standards of review correctly, leaving the issues that are for the trial court to the trial court, and the issues that are for the legislature to the legislature, while preserving the authority and respect due the appellate courts. He will decide cases presented to him fairly in accordance with the law. Any lawyer or litigant who appears in front of him will perceive that they have had their day in court before a judge who understood the case and tried to do right.

Caleb Stegall would be an outstanding member of the court and would render great service to the people of Kansas.

Very truly yours,

FOULSTON SIEFKIN LLP

James D. Oliver

JDO/nm



# City of Lawrence KANSAS

## CITY COMMISSION

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MICHAEL DEVER

COMMISSIONERS  
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JEREMY FARMER  
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June 20, 2013

Honorable Senator Jeff King  
Chair Senate Judiciary Committee  
Statehouse 237 E  
300 SW 10<sup>th</sup> Avenue  
Topeka, Kansas 66612

*Re: Letter of Recommendation for Caleb Stegall – Kansas Court of Appeals*

Dear Senator King:

I am pleased to provide my highest recommendation for your consideration of Mr. Caleb Stegall for the Kansas Court of Appeals.

Without knowledge of your other candidates, it can be safely stated that Caleb Stegall has among the highest qualifications for your consideration. Outstanding academic qualifications, 10<sup>th</sup> Circuit judicial clerkship, large firm and small firm practice, prosecution work as a county attorney, and now chief counsel for the Governor. His diversity of legal practice – public and private work, civil and criminal – is only excelled by the character and integrity which he has brought to his work. A Kansas native, Caleb brings forth all of the highest qualities we have come to expect by those at both the bar and bench.

I have known Caleb for over a decade. My association has been both professional and personal. In my capacity as City Manager and as an attorney for the City I have worked with Caleb on related public and city issues. Of specific note, was Caleb's representation of a local not-for-profit agency, Family Promise. Family Promise provides transitional housing and training opportunities for families who find themselves without a home, including temporary housing in Lawrence houses of worship. The City sought to improve its regulations on homeless shelters to reflect certain public concerns. Caleb professionally and successfully sought improvement to these City regulations with careful navigation of the various constitutional issues and the intersection of the public interest and various private interests.

As a personal reference I provide my strongest recommendation for Caleb's integrity and personal characteristics.

Caleb brings the strongest of qualifications to your task whether your inquiry is academic background, successful legal experience in the various facets of the profession, fidelity to the rule of law and judicial roles, and personal characteristics which must guide judges in their work. I believe it would be difficult to find many other candidates who excel at all of these necessary attributes in your selection.



I am pleased to provide my highest recommendation for Caleb Stegall.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Corliss". The signature is fluid and cursive, with the first name "David" and last name "Corliss" being clearly legible.

David L. Corliss

City Manager

Kansas Supreme Court No. 13298

THE LAW OFFICES OF  
**DANIEL L. WATKINS**  
901 NEW HAMPSHIRE STREET, SUITE 200  
LAWRENCE, KANSAS 66044

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June 24, 2013

Governor Sam Brownback  
State Capitol  
300 SW 10th Street, Suite 241-S  
Topeka, KS 66612-1590

*RE: Caleb Stegall*

Dear Governor Brownback:

I am writing to highly recommend Caleb Stegall for the opening on the Kansas Court of Appeals.

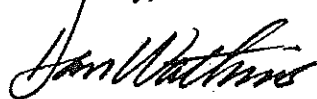
I have had the opportunity over the past few years to work on matters for several clients in which Caleb represented government entities. As your Chief Counsel, he has particularly impressed me, both with his legal abilities and a fair-minded approach to disputed matters. Caleb does diligent research and has an ability to calmly ask the right questions and get right to the heart of issues. He does so in an unassuming manner and with dry wit and civility that earns respect from all sides as he handles contentious issues. He's an advisor and advocate with high standards and integrity.

Caleb excelled in law school and has had impressive success in varied legal environments—from clerking for a Federal Appellate Judge, to experience in a large firm, to his own private practice, as a County Attorney and now as your Chief Counsel. This range of experience gives him a unique perspective and understanding of both the law and Kansas government. This background undoubtedly contributes to Caleb's calm, thoughtful and thorough approach to practicing law.

As good a lawyer and advisor as Caleb is, he also lives his values, putting family first, with a strong commitment to the community. He would also be a justice capable of assisting the judicial branch in communicating effectively with the legislative and executive branches of government.

Caleb has the intellect, experience and temperament to be an outstanding justice on the Court of Appeals and I recommend him without reservation. I hope you will nominate him for the Court of Appeals, subject to approval by the Senate.

Sincerely,



Dan Watkins

cc: Senator Jeff King, Chair  
Senate Judiciary Committee  
300 SW 10<sup>th</sup> Street, Suite 341-E  
Topeka, KS 66612-1590

LAW OFFICES  
**BARBER EMERSON, L.C.**

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CALVIN J. KARLIN  
JANE M. ELDREDGE  
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MATTHEW S. GOUGH\*

Terrence J. Campbell  
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LINDA K. GUTIERREZ  
CATHERINE C. THEISEN  
MATTHEW B. TODD  
EDWARD H. TULLY\*

RICHARD A. BARBER  
(1911-1998)

GLEE S. SMITH, JR.  
OF COUNSEL

\*ADMITTED IN KANSAS AND MISSOURI

June 18, 2013

Governor Sam Brownback  
Office of the Governor  
Capitol  
300 SW 10th Avenue, Suite 241S  
Topeka, KS 66612-1590

Senator Jeff King, Chair  
Senate Judiciary Committee  
Capitol  
300 SW 10th Avenue, Room 341-E  
Topeka, KS 66612

Dear Governor Brownback and Senator King:

I write in enthusiastic support of Caleb Stegall's candidacy for a position on the Kansas Court of Appeals. My recommendation of Caleb is unqualified, because there is no doubt in my mind that Caleb possesses the intellect, temperament, and practical judgment that will make him a judicial star.

I first became acquainted with Caleb when we found ourselves on opposite sides of what was, for our clients, a particularly acrimonious and emotional civil action. Despite the tense nature of the case, Caleb was able to represent his clients' interests vigorously while simultaneously recognizing the importance of developing an extremely productive and professional working relationship among counsel. Caleb understood the law, understood the facts, understood how to communicate them for the benefit of his clients in the context of the adversarial system, and understood that the most beneficial strategy for his clients and their pocketbooks was one where he and I could cooperate at a high level.

I separately had occasion to work with Caleb when he subpoenaed one of my clients to testify in a criminal case on which Caleb was serving as Jefferson County Prosecutor. Caleb took the time to listen and understand my specific concerns in that case, and we worked together to develop a complicated solution that allowed Caleb to further the criminal prosecution without unduly prejudicing my client's rights and concerns. I was particularly impressed by Caleb's approach, because a lesser prosecutor might not have even understood the complicated solution



Governor Sam Brownback  
Senator Jeff King  
June 18, 2013  
Page 2

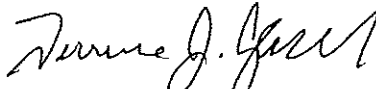
we developed, much less agreed to it.

And Caleb is a well-rounded pillar of his community. He is a caring father, husband, and leader of organizations. He cannot easily be pigeonholed into predictable schools of thought, because he thinks well and deeply about the important issues of our time. He becomes involved with issues that matter regardless of the political party that might nominally be associated with those issues.

Caleb's scholarship and accomplishments speak for themselves. I urge you to place him on the Kansas Court of Appeals.

Very truly yours,

BARBER EMERSON, L.C.

A handwritten signature in black ink, appearing to read "Terrence J. Campbell", written in a cursive style.

Terrence J. Campbell

TJC:dls



June 18, 2013

The Honorable Sam Brownback  
Governor of the State of Kansas  
State Capitol Building, Suite 241-S  
300 SW 10<sup>th</sup> Avenue  
Topeka, Kansas 66612-1590

Re: Letter of Recommendation for Caleb Stegall; Kansas Court of Appeals

Dear Governor Brownback:

I am aware the Kansas Legislature, in the FY 2015 budget has made appropriations for funding the 14<sup>th</sup> Kansas Court of Appeals position that was created several years ago, but has heretofore not been funded due to budget considerations. I understand Mr. Caleb Stegall has indicated he intends to submit his application for that position under the provisions of HB 2019 that was signed into law earlier this year, which allows the Governor to select any qualified attorney and submit such person's name to the Kansas Senate for confirmation proceedings. Accordingly, I am writing to formally give my unqualified support for consideration of Mr. Stegall for this position when the time is appropriate.

I did not make Mr. Stegall's acquaintance until he became your chief counsel in 2011. However, in the two to three years preceding that appointment, I did have occasion to hear the observations of several attorneys who either worked directly with Mr. Stegall or interacted with him in one capacity or another. In each and every instance, words like "professional, competent, prepared, fair and (very) smart" were used to describe Mr. Stegall.

Specifically, I have worked closely with a Douglas County attorney who represents developers that (at the time) were seeking business opportunities in Jefferson County. This attorney had numerous interactions with Mr. Stegall in his capacity as the Jefferson County Attorney. He described Mr. Stegall as a strong advocate for his client (Jefferson County), but someone who was enjoyable to work with due to his command of the issues, understanding of the law, business-friendly and possessed with an engaging personal demeanor.

In another instance, I interacted on frequent occasions with an attorney who was the head of a state agency in the Sebelius Administration who previously was an associate with the Foulston Siefken firm and worked with Mr. Stegall. This person had a very high regard for Mr. Stegall's legal abilities and temperament, even though they were not aligned politically.

It was with this anecdotal background as context that I first came to know Mr. Stegall firsthand in his current role as your chief counsel and my professional life as a government relations attorney representing a diverse clientele before the state's Legislative and Executive branches of government.

In one example, over the years I have represented as many as two of the state's four Resident Native American Tribes and currently represent one. Although the four Resident Tribes are Sovereign Nations, their interests do intersect with the State of Kansas from time to time. Years ago the Legislature created the Joint Committee on State-Tribal Relations to foster communication and goodwill between the State of Kansas and the four Resident Tribes.

The committee is composed of a representative from each of the four Resident Tribes, legislators and other state designees, including the Governor's Chief Counsel. During the committee meetings I have attended since 2011, Mr. Stegall has provided great assistance to the Committee and has always been well prepared for the meetings and participates with an understanding of the status and implications of litigation between both the Resident Tribes and other Native American Tribes impacting State interests and has knowledge of related matters involving Native American interests. His counsel has been seen as helpful, non-partisan and relevant by the committee members and interested parties routinely in attendance.

Since my initial interaction with Mr. Stegall, which began early in the 2011 legislative session, I have had occasion to work with him on a variety of matters considered by the Legislative and Executive branches of state government. From legislation impacting attorneys and the practice of law that related to my longstanding representation of the Kansas Bar Association to my representation of clients with legislative and regulatory matters under consideration by the Legislature and state agencies, Mr. Stegall has always done his homework before any meetings I have been involved with and is prepared to have a substantive discussion irrespective of the complexity or controversial nature of the subject matter.

I specifically recall a meeting in late 2011 with Mr. Stegall that involved a client and co-counsel on an issue in which we met with Mr. Stegall to discuss the legislative, administrative and legal implications of a complex matter involving several state agencies and potentially the Legislature. At our meeting, Mr. Stegall had read extensive legal documents and background materials previously provided to him and turned what was originally anticipated to be a cursory meeting to brief the administration's legal counsel on the background of a matter of interest to my client into a substantive discussion on the merits, the legal issues involved (including appellate court consideration), the potential ramifications relating to various courses of action that could be pursued and a possible roadmap for resolution. All three of the participants on my side of the table (myself included) left the meeting highly impressed with Mr. Stegall's quick understanding of a complex legal matter, in particular given his very short period of time to review extensive and detailed materials prior to the meeting (all three of us are attorneys).

Since his appointment as your chief counsel, I have witnessed Mr. Stegall appear before several legislative committees on both legal and legislative issues. His demeanor has been calm and reflective; his testimony before legislative committees has been deliberate and devoid of political tension and his reputation in the statehouse is considered to be respectful and competent. His remarks are received as well-reasoned. In instances where I have seen disagreement between Mr. Stegall and legislators at committee meetings, Mr. Stegall's positions and arguments have not come across as combative, bombastic, rhetorical or theatrical in nature. To the contrary, from my experience, they come across as well-reasoned, determined and supported by competent legal arguments and case law.

Governor Sam Brownback  
Page Three of Three  
June 18, 2013

Mr. Stegall's legal experience is broad in nature and replete with accomplishments that began with a stellar law school record that progressed to include private sector experience with the largest law firm in Kansas and then on to founding of his own firm, successfully elective office as a county attorney and to now to his current position as Chief Counsel to the Governor of the State of Kansas. Mr. Stegall has risen to the top of his class, profession or position with each and every opportunity he has accepted or sought.

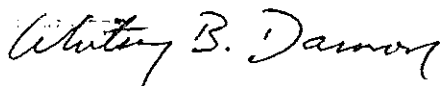
His legal experience includes significant time spent in the courtroom representing clients with commercial litigation, regulatory and administrative issues, and business-related interests. He was elected to serve as a county attorney and ultimately chosen by our Governor to be his chief counsel. The entirety of Mr. Stegall's legal career to date clearly makes him well-qualified to serve on the state's appellate bench.

In closing, I would also note that I have had the opportunity to work closely with Mr. Stegall for the past several years on behalf of the Kansas Bar Association as we have engaged the Administration, key legislators and interested parties in efforts to make changes to the state's appellate selection process that would be acceptable to all parties. The attorneys on my side of the negotiating table consider Mr. Stegall to be a sincere negotiator and strong advocate for his client. I believe it is a testament to Mr. Stegall's credibility and legal ability that all parties involved, regardless of their individual position on the issue have valued the opportunity to work with Mr. Stegall on this matter.

Should you choose to nominate Mr. Caleb Stegall to the Kansas Court of Appeals the loss will most certainly be to you and your Administration, as I know he is a valued member of your staff. But the State of Kansas will gain a worthy jurist with a great future ahead of him on our state's appellate court.

Thank you for your consideration of my comments.

Sincerely,

A handwritten signature in cursive script that reads "Whitney B. Damron".

Whitney B. Damron  
Supreme Court No. 13348

CC: The Honorable Jeff King, Vice President of the Kansas Senate

# Maryland Lottery and Gaming Control Agency

Martin O'Malley, Governor • Stephen Martino, Director



Montgomery Park Business Center  
1800 Washington Blvd., Suite 330  
Baltimore, Maryland 21230

Tel: 410-230-8800  
TTY users call Maryland Relay  
[www.mdlottery.com](http://www.mdlottery.com)

June 28, 2013

The Honorable Sam Brownback  
Governor, State of Kansas  
300 SW 10th St.  
Topeka, KS 66612

*RE: Caleb Stegall*

Governor Brownback:

I would like to provide my recommendation for Caleb Stegall, who seeks your nomination to serve on the Kansas Court of Appeals. Caleb is a friend, a former legal colleague and someone for whom I have enormous personal and professional respect. I believe that his nomination and confirmation as a member of the Court of Appeals would serve the best interests of justice and the people of Kansas.

I know Caleb to be a highly skilled lawyer, adept at practicing in a variety of areas and given to a prodigious ability to learn quickly. I think these skills well qualify him for service on the bench. I think the most a client can ask of his or her lawyer is that he or she receives undivided, uncompromised attention for his or her matter and that the lawyer attacks the legal question with intelligence and zest. The people of Kansas demand the same of their judges, and I know that Caleb will give them that and more.

Caleb and I practiced together for two and a half years in the Topeka office of Foulston Siefkin. He was equally gifted at producing high quality work for complex civil litigation, multi-million dollar transactions and intricate pension plans. He is a former law clerk for Deanell Tacha, formerly chief judge of the 10<sup>th</sup> U.S. Circuit Court of Appeals. Since the time he and I worked together, Caleb has operated his own firm, been elected Jefferson County Attorney and now serves as your chief counsel. Given his experience and natural interest in government and public policy, he is particularly well-suited to serve on the Court of Appeals.

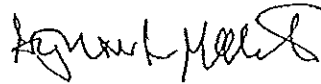
Caleb was on the fast track at Foulston, leaving shortly before he would have been made a partner to open his own office in Perry, where he lives with his wife, Ann, and their five sons. He decided that quality-of-life issues for his family and himself

outweighed the so-called prestige of working at a big firm. In every interaction I have ever had with him – personal and professional – I have seen Caleb apply a deliberate, common-sense method to reach considered, reasonable decisions. This uniquely Kansas approach is honest, ethical and just, which is precisely how I would expect Caleb to serve as a judge.

As a lawyer, Caleb has taken on politically unpopular causes and clients in an effort to see no person's interests trampled. While I may have disagreed with his clients and their causes, I admire the determination and commitment of the lawyer to see the right thing done. If ever my issue appeared before a court, I would hope that the judge would apply that same standard in finding an outcome. I have no doubt that Caleb would.

I recommend Caleb Stegall for the Kansas Court of Appeals without reservation and hope you view his application positively. If I can be of any further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen L. Martino".

Stephen L. Martino

cc: The Honorable Jeff King  
Chairman, Senate Judiciary Committee  
Kansas State Senate  
300 SW 10 St.  
Topeka, KS 66612

Caleb Stegall